

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Chris Olmsted	Team: Squad #9	CCRB Case #: 202003828	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 05/30/2020 9:30 PM	Location of Incident: East 14th Street and 4th Avenue	Precinct: 05	18 Mo. SOL 11/30/2021	EO SOL 5/4/2022	
Date/Time CV Reported Tue, 06/02/2020 7:59 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Tue, 06/02/2020 7:59 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. Officers			
2. An officer			

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Christophe Torturo	02377	945065	026 PCT
2. POM Nezir Ljubanovic	26347	965274	013 PCT
3. SGT Ming yun Cheung	03788	942769	013 PCT
4. POM Chunho Lai	12520	960780	005 PCT
5. POF Margarita Perez	08584	961092	005 PCT
6. POM Brian Coughlin	20321	958442	005 PCT
7. POM Frank Faber	16418	957570	005 PCT
8. POM Steven Schwartz	06532	957145	005 PCT
9. POM Jonathan Llubes	21473	967964	047 PCT
10. POM Christophe Derco	14560	946917	023 DET
11. POF Rosibel Kery	19293	963090	047 PCT

Officer(s)	Allegation	Investigator Recommendation
A. Officers	Force: Officers used physical force against individuals.	
B. An officer	Force: An officer used physical force against § 87(2)(b)	

Case Summary

On June 2, 2020, § 87(2)(b) filed this complaint with the CCRB via the online form on behalf of herself and unidentified individuals. It was reassigned to the undersigned on August 25, 2020, after Inv. Leilani Rhodes' departure from the agency.

On May 30, 2020, at approximately 9:30 p.m., § 87(2)(b) and 15 to 30 unidentified individuals were standing on a sidewalk on 4th Avenue just south of its intersection with East 14th Street in Manhattan as part of a protest group when unidentified officers began pushing individuals with their batons. (**Allegation A: Force,** § 87(2)(g)) An officer used his baton to push § 87(2)(b) (**Allegation B: Force,** § 87(2)(g))

No summonses were issued nor arrests made as a result of this incident.

Pleading Language for all allegations to be closed as § 87(2)(g)

Allegation (A) Force: Officers used physical force against individuals.

Allegation (B) Force: An officer used physical force against § 87(2)(b)

Known facts and general descriptions

§ 87(2)(b) stated several of approximately 20 police officers in her vicinity pushed individuals with their batons but recalled only two officers in detail. She described the officer who pushed her, PO1, as a 5'10" tall, 200-pound white male with medium length brown or black hair, and a heavy-set build. She stated he was wearing gloves, holding a baton, and wearing an NYPD uniform with short sleeves. She described an officer who witnessed the incident as a 5'7"/5'8" tall, 180-pound white male in his 30s or 40s with a shaved head, average build, and "small gut" wearing an NYPD uniform with short sleeves. She did not allege this officer to be one of those who pushed protestors or who pushed her. (BR 1)

§ 87(2)(b) provided a photograph she took moments before she was pushed and indicated which of the four officers in the foreground was PO1. This photo was geo-tagged on 4th Avenue, just south of its intersection with East 14th Street. It was not possible to make out PO1's nameplate, shield number, command insignia, or any other identifying information from the photograph. Of the other officers, one is too blurry to be identified, one's uniform has sergeant insignia but otherwise no clear identifiers, and one is wearing a helmet with shield number 2377. That officer was identified as PO Christopher Torturo, and he was interviewed. In addition to the unidentified Sergeant, the photograph § 87(2)(b) provided shows at least three unidentified white-shirted officers in the background. (BR 2)

BWC

The CCRB requested BWC videos recorded at approximately 9:45 p.m. at the intersection of East 14th Street and 4th Avenue on May 30, 2020 and received seven videos, none of which was relevant to this investigation. (BR 3) In response to a second request the CCRB received three new videos, none of which was relevant to this investigation, and was informed that PO Torturo had no videos from that night. (BR 4)

In addition to this BWC evidence, the investigation reviewed a video from the New York Times of protest activity on May 30, 2020 at Union Square (BR 5), security footage from a Walgreens near

the incident location (BR 6), and all video evidence in CCRB investigations 202003847, 202003699, 202004300, 202003687, 202005166, 202008249, 202006650, 202007552, 202006745, 202003697, none of which contained information relevant to this investigation.

NYPD Documents Reviewed

The investigation reviewed the following NYPD documents from May 30, 2020 in attempts to identify subject and/or ranking officers on scene:

- Patrol Borough Manhattan South Detail Rosters (BR 7)
- Advance Roll Calls and Event Information from the 5th, 6th, 9th, and 13th Precincts (BR 8)

The Patrol Borough Manhattan South Detail Rosters identified Sergeant Ming yun Cheung of the 13th Precinct (shield 03788) and Sergeant Eric Luk of the Training Bureau (shield 05186) as supervising officers assigned to Union Square on May 30, 2020. Both sergeants were interviewed. The rosters did not note the highest-ranking officer on scene.

The Detail Rosters, Advance Roll Calls, and Event Information suggested the following officers may have been in the area:

- Ljubanovic, Nezir (965274)
- Cheung, Ming yun (942769)
- Lai, Chunho (960780)
- Perez, Margarita (961092)
- Coughlin, Brian (958442)
- Faber, Frank (957570)
- Schwartz, Steven (957145)
- Lluberes, Jonathan (967964)
- Kery, Rosibel (963090)
- Derco, Christopher (946917)

The investigation reviewed MOS photos and memobooks for these officers and found no evidence relevant to this investigation. (BR 9-11)

In addition to the above documents, the investigation reviewed NYPD Training Bureau manuals on crowd control and demonstrations (BR 12). These manuals did not provide investigative leads. The investigation requested of Patrol Borough Manhattan South maps and memoranda regarding protest mobilizations on May 30, 2020, but they returned negative results. (BR 13)

Concurrent Investigations

No other agencies or investigative bodies were identified as conducting any concurrent investigations into these allegations.

Ranking Officers

The investigation was unable to identify the ranking officer at Union Square on May 30, 2020 due to the lack of clear NYPD documentation, the inability of the interviewed officers to recall the ranking officer on scene, and the abundance of white-shirted officers depicted by video evidence as being near Union Square at approximately the incident time.

Six other CCRB investigations overlapped with this case in either alleged incident time, location, or, in the case of 202004300, both. In CCRB 202004300, PO Ali Hassan of the 105th Precinct was ordered by an “unknown supervisor” to clear 4th Avenue south of its intersection with East 14th Street. Video evidence from that case places PO Hassan south of § 87(2)(b)'s position and does not appear to capture her. That investigation did not identify the unknown supervisor. No CCRB investigation identified the ranking officer at Union Square on May 30, 2020.

Officers Interviewed

The investigation conducted three officer interviews with the following results:

Sergeant Ming yun Cheung of the 13th Precinct (shield 03788):

The investigation interviewed Sergeant Cheung because he was named as a supervisor in the Union Square area on May 30, 2020 by PBMS Detail Rosters. Sergeant Cheung had a limited recollection of the incident and could not recall with whom he was working or who the ranking officers on scene were.

Sergeant Cheung stated he observed officers using their batons to push protestors, but he neither heard nor later became aware of another officer ordering the use of the technique.

Sergeant Cheung's BWC was automatically time-stamped incorrectly as occurring on June 30, 2020. Once the error was noticed and accounted for, the investigation determined Sergeant Cheung's BWC was active for the entire incident window and shows that he was in a different part of the Union Square area and could not have witnessed this incident. (BR 14)

The investigation determined Sergeant Cheung was uninvolved. His interview provided no further investigative leads.

Sergeant Eric Luk of the Training Bureau (shield 05186):

The investigation interviewed Sergeant Luk because he was named as a supervisor in the Union Square area on May 30, 2020 by PBMS Detail Rosters. Sergeant Luk stated that on May 30, 2020 he was assigned as a Detail Sergeant overseeing eight officers from the 5th Precinct. He was called to the Union Square area between 5:00 p.m. and 5:30 p.m. and assigned an arrest by a captain he did not recognize. He departed the area with the arrestee and took her to One Police Plaza. He waited for information about the arrest that never came, so at approximately 9:00 p.m. he and his team brought the arrestee to the 5th Precinct station house and Sergeant Luk oversaw the preparation of a voided arrest report.

Sergeant Luk stated he was inside the 5th Precinct stationhouse for the entire incident window and had no knowledge of the incident. He stated he was not near the incident location at the time and was therefore unaware of any orders given, actions taken, or officers present. (BR 15)

The investigation determined Sergeant Luke was uninvolved.

PO Christopher Torturo of the 26th Precinct (shield 02377):

The investigation interviewed PO Torturo because his shield number appears on the helmet worn by an officer in the photograph § 87(2)(b) provided. PO Torturo stated that he had a helmet with his shield number on it but that he had no recollection of the incident.

PO Torturo stated that although he could not be sure it occurred on May 30, 2020, he was deployed one time to the Union Square area during the nights of protest. He stated that on that day he had been assigned to a sergeant from his precinct, but that he immediately became separated from his sergeant upon arriving at Union Square. He stated he ended up with a group of officers from several different commands, none of which he could recall, under a sergeant he did not know. He stated the sergeant was not from the 26th precinct.

PO Torturo stated that when he was deployed to the Union Square area he saw officers pushing protestors with their batons. He stated he had attended a training on crowd control within the past year that discussed the technique he saw. He stated that at several points on the night he

was deployed to Union Square he was ordered to form a line with other officers and use this pushing maneuver to relocate crowds of people, but that he did not recall who gave any of these orders. He stated he did not know who the ranking officer on scene was. He stated he recalled seeing a captain but did not know who the captain was. PO Torturo stated he had no recollection of seeing an officer push a person in the manner § 87(2)(b) alleged.

PO Torturo looked at the photograph § 87(2)(b) provided and stated he did not recognize any officer in it.

§ 87(2)(b) did not allege that the officer wearing the helmet with “2377” was one of the officers who pushed individuals near her. She identified an officer other than the helmeted officer as the one who pushed her.

The investigation determined that PO Torturo was a witness to this incident. He did not recall details allowing the investigation to positively ID either a subject or ranking officer.
(BR 16)

Allegation Recitation and Disposition

§ 87(2)(b) alleged that while she and others were standing on a sidewalk on 4th Avenue, police officers approached them and ordered them to move further back on the sidewalk. She alleged that before they had a chance to react to the order, an officer began pushing her with a baton and other officers began pushing individuals near her with their batons.

§ 87(2)(b) provided a photo of the officer who pushed her, but the CCRB was unable to identify him. After reviewing all available evidence, the CCRB identified one witness officer who stated he did not recognize the officer who allegedly pushed § 87(2)(b) or the officer who may have been in command in that moment.

§ 87(2)(g)

Squad No.: 09

Investigator:	<u>Christopher Olmsted</u>	<u>Investigator Chris Olmsted</u>	<u>August 5, 2021</u>
	Signature	Print Title & Name	Date

Squad Leader:	<u>Monique West</u>	<u>IM Monique West</u>	<u>8/26/2021</u>
	Signature	Print Title & Name	Date

Reviewer:	_____	_____	_____
	Signature	Print Title & Name	Date